Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 613 (M/S) of 2001
(OLD NO. 31084/90)

Sri Narayan Datt S/o Sri Mahanand
Resident of Village Artola Patti Darun,
Tehsil Almora, District- Almora. **.....Petitioner.**

Vs.

1. The State of U.P. through Collector, Almora.
2. The Commissioner, Kumaon Division, Nainital. **.....Respondents.**

Sri Sudhir Singh learned counsel for the petitioner.
Sir Nand Prasad learned Standing counsel for the respondents.

Date: - 22nd September 2006

Hon'ble B.S. Verma, J.

Heard Sri Sudhir Singh learned Counsel for the petitioner and Sri Nand Prasad learned Standing counsel for the respondents. Writ petition is admitted.

2. By way of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari for quashing the orders dated 19.04.1990 and 03.08.1990 passed by respondent No.1 and 2 i.e. Collector, Almora and Commissioner, Kumaon Division, Nainital respectively.

3. Brief facts giving rise to this petition are that the State of U.P. vide Government Order No. 150/88/76(889) Rajasar-Dec. 1976, Anubhag -6 Lucknow promulgated a scheme for regularization of the unauthorized occupation over the Government Land. In this connection, on 12.08.1980, father of the petitioner moved an application under the aforesaid Scheme, before the respondent No.1-Collector, Almora for regularization of 18 Nali of such Government land on his name. On the said application, the Collector, Almora directed the Sub-Divisional Officer, Almora to enquire about the matter and submits its report in this regard. Thereafter, the Sub-Divisional Officer, Almora directed the Tehsildar and Supervisor Kanoongo to collect the evidence regarding said property. The Supervisor Kanoongo submitted the report on 14.09.1980 before the Sub-Divisional Officer, Almora stating therein that the father of the petitioner has been used the said property for

plantation and no person has opposed the said regularization. The sub-Divisional Officer on 24.12.1980 submitted a recommendation letter before the Collector, Almora stating therein that the land sought to be regularized was being sanctioned for regularization.

3. The Collector, Almora vide order dated 19.04.1990 has refused to regularize the land in question in favour of the petitioner, on the ground that the petitioner had sold away 18 Nali of land to his relative and thus he was not in actual need of the land in question. The learned Collector passed an order of eviction of petitioner form the land in question without taking recourse of law.

4. Feeling aggrieved by the aforesaid order of the Collector, Almora the petitioner preferred a revision before the respondent No.2-Commissioner, Kumaon Division, Nainital who has also dismissed the same vide order dated 03.08.1990.

5. Feeling aggrieved by the aforesaid orders, petitioner preferred this petition before the Allahabad High Court, which has been transferred to this Court, for disposal, after creation of new State.

6. I have heard the submission of the leaned counsel Sri Sudhir Singh for the petitioner and learned Standing counsel appearing on behalf of the respondents- State and perused the record.

7. It was contended by the learned counsel for the petitioner before me that the learned Collector has committed a manifest error of law in holding that the petitioner had sold land to his relative and then he was not in possession of actual land in question. The learned Collector lost his sight to this effect that the application was moved by the father of the petitioner for regularization of 18 Nali of the said land. The application was not opposed by any person to the said regularization and the sub-Divisional Officer has also recommended on 24-12-1980 to the Collector Almora, to regularize the land in favour of father of the petitioner. The learned Collector has rejected the application on the ground that the petitioner has sold about 18 Nali of land while no land was sold by the father of the petitioner and regularization was sought by the father of the petitioner nor by the petitioner itself. The

petitioner only succeeds the land of his father in succession after the death of his father. The learned Collector had committed an error to consider the land of the petitioner on the date of order for the purpose of regularization and rejected the application for regularization on the ground that the petitioner is not in actual need of land in question after the death of his father. The finding of the learned Collector that the petitioner is not in the actual need of the land so that the land could not be regularized is perverse. This fact can only be considered in that situation if the petitioner moves separate application for another land which was not in the possession of the father of the petitioner and the land was in separate possession of the petitioner. The only controversy before the learned Collector whether the 18 Nali of land can be regularized in favour of the petitioner. When he moved application for regularization and whether he was entitled to get the benefit of said G.O., deposit of the recommendation made in his favour. The learned Collector without touching to the controversy rejected the application of the father of the petitioner.

8. The application of the petitioner would not have been rejected on this ground alone. The learned Commissioner has also committed the same error and dismissed the revision filed by the petitioner.

9. On the date of the application, the father of the petitioner was entitled for regularization of the land as per G.O. No. 150/88/76 (889). It reveals from the report of the Supervisor Kanoongo and Sub-Divisional Officer dated 14-9-1980 that the father of the petitioner was entitled for regularization of the 18 Nali of the land, which was in his possession at the time when the Government Order was issued.

10. In view of the discussion aforementioned, both the orders passed by the Collector as well as by the Commissioner are manifestly erroneous and are liable to be quashed.

11. The writ petition succeeds and is hereby allowed. Accordingly, the application which was moved by the father of the petitioner regarding regularization of the 18 Nail of the land is allowed and the legal heirs of late Sri Mahanand are entitled to succeed for the land in question on the basis of

the succession. The entry of revenue record be corrected accordingly, if the petitioner is the only legal heirs to succeed Mahanand the entry be made in his favour if Late Mahanand left some other legal heir, in that event the entry be made in favour of all the legal heir on the land in question. No order as to cost.

(B.S. Verma, J.)

Dated: - 22nd September 2006

M.K.